

## DEPARTMENT OF THE ARMY PERMIT

**Permittee:** King County Department of Transportation

201 South Jackson Street  
MS KSC-TR-0231  
Seattle, Washington 98104

**Permit No:** NWS-2009-1586

**Issuing Office:** Seattle District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** Place fill and discharge dredged material associated with replacing the South Park Bridge (in accordance with the plans and drawings dated November 30, 2010 attached hereto which are incorporated in and made a part of this permit). The purpose of the project is to restore a river-spanning transportation corridor between the South Park section of Seattle and the area around Boeing Field.

**Project Location:** In the Duwamish Waterway and Elliott Bay near Seattle, King County, Washington ,

**Permit Conditions:**

*General Conditions:*

1. The time limit for completing the work authorized ends on MAR 25 2014. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in accordance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification to this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
7. After a detailed and careful review of all the conditions contained in this permit, the permittee

acknowledges that, although said conditions were required by the Corps, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of all the permit conditions.

*Special Conditions:*

- a. This U.S. Army Corps of Engineers (Corps) permit does not authorize you to take a threatened or endangered species, in particular Chinook salmon, steelhead, and bull trout. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or ESA Section 7 consultation Biological Opinion (BO) with non-discretionary "incidental take" provisions with which you must comply). The BOs prepared by the National Marine Fisheries Service (NMFS) dated January 25, 2010, and the U.S. Fish and Wildlife Service (USFWS) dated August 17, 2009, contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified "incidental take" in the BO (USFWS Reference Number 13410-2008-F-0383, NMFS Reference Number 2008/03523). Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the BOs. These terms and conditions are incorporated by reference in this permit. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and your Corps permit. USFWS and NMFS are the appropriate authorities to determine compliance with ESA.
- b. In order to protect the listed threatened and endangered species in the project area, the permittee may conduct the authorized activities in the work window as agreed to and documented in writing through consultation by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service (Services) in any year this permit is valid. If changes to the originally authorized work window are proposed, the permittee must re-coordinate these changes with the Services and receive written concurrence on the changes. Copies of the concurrence(s) must be sent to the U.S. Army Corps of Engineers, Regulatory Branch, within 10 days of the date of the revised concurrence.
- c. In order to protect Essential Fish Habitat (EFH) for Pacific salmon, groundfish, and coastal pelagic species listed under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the conservation recommendations committed to by the Federal Highway Administration, in their written response letter dated February 5, 2010, submitted pursuant to 50 CFR 600.920(j)(1) and coordinated with NMFS, are incorporated by reference in this permit. Failure to comply with the commitments made in this negotiation constitutes non-compliance with the MSA and your U.S. Army Corps of Engineers permit.
- d. The Memorandum of Agreement (MOA), entitled *Memorandum of Agreement between the Federal Highway Administration, the United States Army Corps of Engineers, and the Washington State Historic Preservation Officer, Pursuant to 36 CFR Part 800.6(c) Regarding the King County South Park Bridge Near the City of Tukwila Washington*, and signed by these entities, must be implemented in its entirety. The Federal Highway Administration has been designated the lead federal agency responsible for implementing and enforcing the MOA as signed. If you fail to comply with the implementation and associated enforcement of MOA, the U.S. Army Corps of Engineers may determine that you are out of compliance with the conditions of the Department of the Army permit or authorization and suspend the permit or authorization. Suspension may result in modification or revocation of the authorized work.
- e. By accepting this permit, the permittee agrees to accept such potential liability for response costs, response activity and natural resource damages as the permittee would have under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. (CERCLA) or the Model Toxics Control Act, R.C.W. 70.105 (MTCA) absent the issuance of this permit. Further, the permittee

agrees that this permit does not provide the permittee with any defense from liability under the CERCLA or the MTCA. Additionally, the permittee shall be financially responsible for any incremental response costs attributable under CERCLA or MTCA to the permittee's activities under this permit in the Lower Duwamish Waterway.

- f. At least 14 days prior to beginning the dredging and disposal work, the permittee must notify the U.S. Army Corps of Engineers (Corps), Seattle District, Regulatory Branch Project Manager, by telephone, (206)764-3495, to schedule a Predisposal Conference.
- g. At least 7 days prior to the scheduled Predisposal Conference, the permittee must submit to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch Project Manager, a quality control plan for dredging and disposal. This plan must include: the equipment and vessels to be used, operational controls to ensure dredging accuracy, disposal positioning procedures, spill control and response measures, water quality monitoring and contingency plans for water quality exceedances, debris management, personnel and responsibilities, dredging and disposal schedule, report submittals, agency contact information and coordination procedures. The plan must be approved by the Corps, Washington State Department of Natural Resources and Washington State Department of Ecology prior to commencement of open-water disposal.
- h. At least 7 days prior to dredging and disposal, the permittee, the dredging contractor's representative, and the dredging contractor's disposal positioning supervisor must attend a Predisposal Conference to review the U.S. Army Corps of Engineers permit conditions, dredging and disposal quality control plan, DNR site-use authorization and water quality certification.
- i. A predisposal dry run may be required by the U.S. Army Corps of Engineers (Corps). At the discretion of the Corps, the Regulatory Branch Project Manager may ride out to the disposal site during the predisposal dry run or the first disposal run to verify positioning accuracy.
- j. Disposal must be by bottom-dump barge. Disposal by any other means is prohibited.
- k. Disposal operations must not interfere with Indian treaty fishing at the disposal site, including gill nets and other fishing gear. The permittee must coordinate any nighttime disposal with the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch Project Manager. Approval must be received from the District Engineer prior to conducting nighttime disposal.
- l. For projects in Puget Sound: The United States Coast Guard must be notified by letter 14 days prior to commencing dredging operations. Notification should be sent to Commander (dpw), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067 or faxed to (206) 220-7265 so that the information can be issued in the Local Notice to Mariners.
- m. The United States Coast Guard (USCG) Puget Sound Vessel Traffic Service (VTS), also known as "Seattle Traffic", must be contacted by radio prior to each disposal for positioning and verification of location within the disposal site target area. Disposal may not commence until verification is received from the USCG. Information required by the USCG must be provided for recording of the dump.
- n. You must have a copy of this permit available on the vessel used for the authorized transportation and disposal of the dredged material.

- o. All hopper dredges must be equipped with the Silent Inspector (SI) system for hopper dredge monitoring. The SI system must have been certified by the Engineer Research and Development Center (ERDC) within the last year. Questions regarding certification should be addressed to the SI support team at 601-634-2923. The data collected by the SI system must, upon request, be made available to U.S. Army Corps of Engineers, Seattle District, Regulatory Branch.
- p. All deviations from the authorized dredging footprint or depths must be reported to the Regulatory Branch Project Manager within 24 hours of discovery.
- q. Plotted results of the post-dredge bathymetric survey must be submitted to the Dredged Material Management Office in PDF format within 30 days of completion of dredging. Results must clearly display the post-dredge sediment surface in relation to the permitted dredge boundary and depth, as well as the location of project features such as docks, wharfs and other landmarks. The vertical datum must be clearly indicated. Full bathymetric survey data must be submitted upon request.
- r. If dredging cannot be completed prior to the "recency determination" date specified in the Dredged Material Management Program (DMMP) suitability determination, the Dredged Materials Management Office (DMMO) Project Manager must be contacted. The DMMO Project Manager will coordinate with the other DMMP agencies to determine whether an extension to the recency period can be granted.
- s. Dredged material found unsuitable for open-water disposal must be deposited at an upland site, and be in compliance with rules and regulations promulgated by the local health district, Washington State Department of Ecology( Ecology) and the landfill operator. The location of the disposal site must be provided to the U.S. Army Corps of Engineers (Corps), Seattle District, Regulatory Branch Project Manager (by telephone, (206) 764-6907) and the Ecology Federal Permit Coordinator (by telephone, (360) 407-6076 or e-mail, [ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov) ), at least 14 days prior to commencement of dredging. Return flow to waters of the United States is prohibited without engineering controls approved by the Corps and Ecology.
- t. You must provide a copy of the permit transmittal letter, the permit form, and drawings to all contractors performing any of the authorized work.

**Further Information:**

- 1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:
  - ☐ Section 10 of the Rivers and Harbor Act of 1899 (33 U.S.C. 403).
  - ☒ Section 404 of the Clean Water Act (33 U.S.C. 1344).
  - ☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C 1413).
- 2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.
  - b. This permit does not grant any property rights or exclusive privileges.

- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

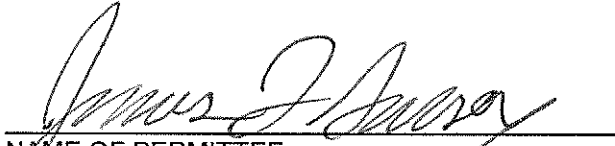
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of the permit.
- b. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

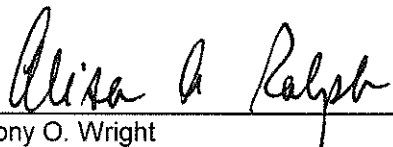
6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
NAME OF PERMITTEE

March 25, 2011  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

  
lv Anthony O. Wright  
Colonel, Corps of Engineers  
District Engineer

25 March 2011  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFeree)

\_\_\_\_\_  
(DATE)